

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 3048 (Lowenthal)  
Version: April 10, 2024  
Hearing Date: July 2, 2024  
Fiscal: Yes  
Urgency: No  
CK

**SUBJECT**

California Consumer Privacy Act of 2018: opt-out preference signal

**DIGEST**

This bill requires browsers to include a setting that enables a consumer to send an opt-out preference signal to a business with which a consumer interacts.

**EXECUTIVE SUMMARY**

The CCPA grants consumers certain rights with regard to their personal information, including enhanced notice, access, and disclosure; the right to deletion; and protection from discrimination for exercising these rights. (Civ. Code § 1798.100 et seq.) In the November 3, 2020 election, voters approved Proposition 24, which established the California Privacy Rights Act of 2020 (CPRA). The CPRA amends the CCPA, limits further amendment, and creates the California Privacy Protection Agency (PPA).

Relevant here, the CCPA provides a consumer the right, at any time, to direct a business that sells or shares personal information about the consumer to third parties not to sell or share the consumer's personal information. It requires such a business to provide notice to consumers of their opt-out right.

This bill seeks to empower consumers to exercise this right more meaningfully in the many interactions they have with businesses online. It prohibits a business from developing or maintaining a browser that does not include a setting that enables a consumer to send an opt-out preference signal to a business with which the consumer interacts through the browser. The setting must be easy for a reasonable person to locate and enable.

This bill is sponsored by the California Privacy Protection Agency. It is supported by a number of privacy and consumer advocacy groups, including the Center for Digital Democracy and Consumer Reports. No timely opposition was received.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes the CCPA, which grants consumers certain rights with regard to their personal information, including enhanced notice, access, and disclosure; the right to deletion; the right to restrict the sale of information; and protection from discrimination for exercising these rights. It places attendant obligations on businesses to respect those rights. (Civ. Code § 1798.100 et seq.)
- 2) Provides a consumer the right, at any time, to direct a business that sells or shares personal information about the consumer to third parties not to sell or share the consumer's personal information. It requires such a business to provide notice to consumers, as specified, that this information may be sold or shared and that consumers have the right to opt out of that selling and sharing. (Civ. Code § 1798.120.)
- 3) Prohibits a business, notwithstanding the above, from selling or sharing the personal information of consumers if the business has actual knowledge that the consumer is less than 16 years of age, unless the consumer, in the case of consumers at least 13 years of age and less than 16 years of age, or the consumer's parent or guardian, in the case of consumers who are less than 13 years of age, has affirmatively authorized the sale or sharing of the consumer's personal information. A business that willfully disregards the consumer's age shall be deemed to have had actual knowledge of the consumer's age. (Civ. Code § 1798.120(c).)
- 4) Provides a business shall not be required to comply with the requirement to place a clear and conspicuous link to opt out if the business allows consumers to opt out of the sale or sharing of their personal information and to limit the use of their sensitive personal information through an opt-out preference signal sent with the consumer's consent by a platform, technology, or mechanism, based on technical specifications set forth in regulations. (Civ. Code § 1798.135.)
- 5) Defines "personal information" as information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. The CCPA provides a nonexclusive series of categories of information deemed to be personal information, including identifiers, biometric information, and geolocation data. (Civ. Code § 1798.140(v).) The CCPA defines and provides additional protections for sensitive personal information, as defined, that reveals specified personal information about consumers. (Civ. Code § 1798.140(ae).)

- 6) Establishes the CPRA, which amends the CCPA and creates the PPA, which is charged with implementing these privacy laws, promulgating regulations, and carrying out enforcement actions. (Civ. Code § 798.100 et seq.; Proposition 24 (2020).)
- 7) Permits amendment of the CPRA by a majority vote of each house of the Legislature and the signature of the Governor, provided such amendments are consistent with and further the purpose and intent of this act as set forth therein. (Proposition 24 § 25 (2020).)

This bill:

- 1) Prohibits a business from developing or maintaining a browser that does not include a setting that enables a consumer to send an opt-out preference signal to a business with which the consumer interacts through the browser. This required setting must be easy for a reasonable person to locate and enable.
- 2) Prohibits a business from developing or maintaining a device through which a consumer interacts with a business that does not include a setting that enables the consumer to send an opt-out preference signal to that business pursuant to regulations adopted by the PPA.
- 3) Authorizes the PPA to adopt regulations as necessary to implement and administer this law, including to update the definitions of “browser” and “device” to address changes in technology, data collection, obstacles to implementation, or privacy concerns.
- 4) Defines “browser” to mean an interactive software application that is primarily used by consumers to access internet websites.
- 5) Includes findings and declarations that this law furthers the purposes and intent of the CPRA.

### COMMENTS

#### 1. California’s landmark privacy protection law

As stated, the CCPA grants consumers certain rights with regard to their personal information, as defined. With passage of the CPRA in 2020, the CCPA got an overhaul. Consumers are afforded the right to receive notice from businesses at the point of collection of personal information and the right to access that information at any time. The CCPA also grants a consumer the right to request that a business delete any personal information about the consumer the business has collected from the consumer. However, a business is not required to comply with such a request to delete if it is

necessary for the business to maintain the consumer's personal information in order to carry out certain obligations or other conduct.

The CCPA provides adult consumers the right, at any time, "to direct a business that sells personal information about the consumer to third parties not to sell the consumer's personal information. This right may be referred to as the right to opt-out." Changes made by the CPRA extend this to opting out of the "sharing" of the personal information as well. A business is thereafter prohibited from selling (or sharing) that information unless consent is subsequently provided. A business that sells or shares personal information to third parties is required to notify consumers that this information may be sold or shared and that they have the right to opt out of such sales. (Civ. Code § 1798.120(b).)

## 2. Providing tools to effectuate consumer rights

Despite this right to opt out, many consumers are simply overwhelmed with meaningfully exercising this right given all the businesses that the consumer interacts with online. According to research by Consumer Reports:

The CCPA's opt-out model is inherently flawed; it places substantial responsibility on consumers to identify the companies that collect and sell their information, and to submit requests to access it, delete it, or stop its sale. Even when companies are making a good-faith effort to comply, the process can quickly become unmanageable for consumers who want to opt out of data sale by hundreds if not thousands of different companies.<sup>1</sup>

The report found that consumers struggled to locate the required links and were forced to navigate through confusing disclosures. The report offered up a number of policy recommendations, including that consumers should have access to browser privacy signals that allow them to opt out of all data sales in one step.

Previous attempts have been made to achieve this sort of mechanism, including when nearly all major browser vendors adopted "Do Not Track," a technology that allowed consumers to transmit "Do Not Track" requests to businesses via their web browser. However, there was no legal requirement to honor these signals.

More recently Global Privacy Control entered the market. It is a browser setting that notifies websites of a consumer's privacy preferences, such as not sharing or selling their personal information, with each website the consumer visits.

---

<sup>1</sup> Maureen Mahoney, *California Consumer Privacy Act: Are Consumers' Digital Rights Protected?* (October 1, 2020) Consumer Reports, [https://advocacy.consumerreports.org/wp-content/uploads/2020/09/CR\\_CCPA-Are-Consumers-Digital-Rights-Protected\\_092020\\_vf.pdf](https://advocacy.consumerreports.org/wp-content/uploads/2020/09/CR_CCPA-Are-Consumers-Digital-Rights-Protected_092020_vf.pdf) [as of June 21, 2024].

The CCPA requires businesses to honor opt-out preference signals as a request to opt-out of sale of their personal information. The California Department of Justice (DOJ) included this in their CCPA regulations, adopted in 2020. The PPA's regulations, adopted in 2023, update the opt-out preference signal requirement.

The author argues that now that California businesses receiving opt-out preference signals are required to honor them under the CCPA, there is a significant opportunity to expand consumer access by requiring browsers to offer similar preference signals to consumers. This bill provides that a business shall not develop or maintain a browser that does not include a setting that enables a consumer to send an opt-out preference signal to a business with which the consumer interacts through the browser. It requires the setting to be easy for a reasonable person to locate and enable. To ensure this effectuates the goals of the browser requirement, the bill further prohibits a business from developing or maintaining a device through which a consumer interacts with a business that does not include a setting that enables the consumer to send an opt-out preference signal to that business pursuant to regulations. The bill authorizes the PPA to adopt regulations.

Several stakeholders expressed concerns with the scope of the bill. In response, the author has agreed to narrow the scope by replacing "device" in Section 1798.136(b) with "smartphone operating system," defined as an operating system used by mobile devices, such as smartphones or tablets. In addition, the author will take amendments that delay the effective date of this provision until the PPA is able to promulgate regulations that outline the requirements and technical specifications. Additional amendments to provide clarity have also been agreed to.

According to the author:

Californians have the right to easily opt-out of the sale of their personal information through opt-out preference signals, but many of the top web browsers do not offer such signals. AB 3048 makes it easier for consumers to state their privacy preferences from the start by requiring web browsers to allow a user to exercise their opt-out rights at all businesses with which they interact online in a single step.

In response to feedback from stakeholders, the author has agreed to amendments that narrow the application of the bill to apply to a "mobile operating system" rather than a "device." In addition, the amendments provide that the restriction on businesses to not develop or maintain such a system without the specified setting only becomes operative upon the adoption of relevant regulations by the PPA, and further clarify the scope of those regulations.

### 3. Stakeholder positions

This bill is sponsored by the PPA, which writes:

Opt-out preference signals such as the Global Privacy Control (GPC) are important innovations as they significantly simplify consumers' ability to exercise their rights to opt-out of sale under the CCPA by enabling them to send an opt-out request to every site with which they interact online, without having to make separate requests at each business. The California Consumer Privacy Act of 2018 (CCPA) currently requires businesses to honor opt-out preference signals as a request to opt-out of the sale of their personal information. The California Department of Justice included this in their CCPA regulations, adopted in 2020. The CPPA's regulations, adopted in 2023, update the opt-out preference signal requirement. Once enabled through the browser, businesses receiving these opt-out preference signals are required under California law to honor them as an opt out.

However, to exercise this right under California law, consumers must either use a browser that supports an opt-out preference signal, or take extra steps to find and download a browser plugin created by third-party developers that adds support for such signals. To date, only a limited number of browsers offer native support for opt-out preference signals: Mozilla Firefox, DuckDuckGo, and Brave. Together, they make up less than 10% of the overall global desktop browser market share. Importantly, none are loaded onto devices by default, making it difficult for consumers to learn about and take advantage of these protections. Google Chrome, Microsoft Edge, and Apple Safari—which make up over 90% of the desktop browser market share —have declined to offer these signals, although these companies are also heavily reliant on advertising business models. No device operating system has yet implemented support for opt-out preference signals.

A coalition of groups in support, including the Center for Digital Democracy and the Electronic Privacy Information Center, write:

AB 3048 will ensure that consumers have the ability to use their privacy rights by requiring that browser vendors and suppliers of devices (for example, a mobile device or "smart" TV) include an easy to locate and use setting that enables the consumer to send an opt-out preference signal. This bill's approach will help reduce opt-out friction and make it easier for California residents to control their data, while also providing for flexibility by allowing the CPPA to adopt rules that will allow the law to keep pace with technology.

4. Furthering the purpose and intent of the CPRA

Section 25 of the CPRA requires any amendments thereto to be “consistent with and further the purpose and intent of this act as set forth in Section 3.” Section 3 declares that “it is the purpose and intent of the people of the State of California to further protect consumers’ rights, including the constitutional right of privacy.” It then lays out a series of guiding principles. These include various consumer rights such as:

- consumers should know who is collecting their personal information;
- consumers should have control over how their personal information is used; and
- consumers should benefit from businesses’ use of their personal information.

Section 3 also includes a series of responsibilities that businesses should have. These include:

- businesses should specifically and clearly inform consumers about how they use personal information; and
- businesses should only collect consumers’ personal information for specific, explicit, and legitimate disclosed purposes.

Section 3 also lays out various guiding principles about how the law should be implemented.

The bill ensures a pathway for consumers to more effectively exercise their rights under the CCPA. Therefore, as it explicitly states, this bill “furthers the purposes and intent of the California Privacy Rights Act of 2020.”

**SUPPORT**

California Privacy Protection Agency (sponsor)

Accountable Tech

ACLU California Action

Brave Software

CALPIRG

Center for Democracy and Technology

Center for Digital Democracy

Concept Art Association

Consumer Federation of America

Consumer Reports

Digital Content Next

Electronic Frontier Foundation

Electronic Privacy Information Center (EPIC)

Oakland Privacy

Privacy Researchers and Academics

Privacy Rights Clearinghouse

## OPPOSITION

None received

## RELATED LEGISLATION

### Pending Legislation:

SB 1223 (Becker, 2024) includes “neural data,” as defined, within the definition of “sensitive personal information” for purposes of the CCPA. SB 1223 is currently in the Assembly Privacy and Consumer Protection Committee.

AB 1824 (Valencia, 2024) requires a business that assumes control of all or some part of a transferor business that includes the transfer of a consumer’s personal information to comply with a consumer’s direction to the transferor pursuant to the CCPA. AB 1824 is currently on the Senate Floor.

AB 1949 (Wick, 2024) prohibits the collection, sharing, selling, using, or disclosing the personal information of minors without affirmative consent from either the minor or their parent or guardian, as provided. The bill provides for regulations to be promulgated by the PPA. AB 1949 is currently in this Committee.

AB 2013 (Irwin, 2024) requires developers of AI systems or services that are made available for Californians to use to post on their website documentation regarding the data used to train the system or service, including high-level summaries of the datasets used. AB 2013 is currently in this Committee.

AB 2877 (Bauer-Kahan, 2024) prohibits CCPA covered-businesses that are the developers of AI systems or tools from using the personal information of consumers under the age of 16 to train AI systems or services without first obtaining affirmative authorization, and even with such authorization the data must be de-identified and aggregated before it is used to train. AB 2877 is currently in the Senate Appropriations Committee.

### Prior Legislation:

AB 947 (Gabriel, Ch. 551, Stats. 2023) included personal information that reveals a consumer’s citizenship or immigration status in the definition of “sensitive personal information” for purposes of the CCPA.

AB 1194 (Wendy Carrillo, Ch. 567, Stats. 2023) provided stronger privacy protections pursuant to the CCPA where the consumer information contains information related to accessing, procuring, or searching for services regarding contraception, pregnancy care, and perinatal care, including abortion services.



AB 3048 (Lowenthal)

Page 9 of 9

AB 375 (Chau, Ch. 55, Stats. 2018) established the CCPA.

**PRIOR VOTES:**

Assembly Floor (Ayes 53, Noes 7)

Assembly Appropriations Committee (Ayes 11, Noes 4)

Assembly Privacy and Consumer Protection Committee (Ayes 8, Noes 3)

\*\*\*\*\*